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GOVERNOR



LEONARD K. PETERS  
SECRETARY

COMMONWEALTH OF KENTUCKY  
**ENERGY AND ENVIRONMENT CABINET**

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS  
JOE F. CHILDERS, CHAIR  
WILLIAM D. DONAN  
STEPHEN A. SANDERS

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF **AUGUST 12, 2010**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Russell and Richardson who were representing the Office of Mine Safety and Licensing. Amy Denham was present from OMSL. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **7/8/10** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

- ❑ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

  - 09-MSRC051 Charlton E. Bennett, 10-MSRC-012 Jeremy Keith Carlton and 10-MSRC-079 Tim Collette were each called. Other than Collette these miners did not appear or participate and no one on anyone's behalf filed any response. Thus OMSL moved for **permanent revocation** as to each based upon noncompliance with either the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
  - At the call of 09-MSRC-025 Ryan Hughes he appeared and provided a negative subsequent test such that the suspending test was more likely than not a false positive. Sanders moved to **reinstate**. So moved and after a second this was ratified by the Chair on a unanimous vote.
  - 09-MSRC-076 James William Jarrett Jr., was called and gave proof of extenuating circumstances and other reasons to allow entry of an **Amended Settlement Agreement** for enhanced testing to insure future compliance and rehabilitation. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- ❑ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

  - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 10-MSRC-107 Kenneth A. Conley, 10-MSRC-119 Steve Alan Ford, 10-MSRC-126 Shannon Williams, 10-MSRC-128 Daniel L. Moore and 10-MSRC-129 Larry J. Feltner, were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.

- 10-MSRC-127 James D. Little, represented by Hon. Webster requested a continuance. OMSL did not oppose the motion for **continuance**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-088 Danny H. Stewart was called but failed to appear or contest and no one appeared on his behalf thus OMSL moved for **revocation**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-120 Dana Watts, 10-MSRC-124 Benny Ray Coots, show cause 10-MSRC-130 Brian Feltner, and 10-MSRC-131 Joey R Hopkins, were called and no one appeared, thus OMSL moved for a **show cause** order. A motion was made to grant the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 10-MSRC-118 Richard D. Estes, was called and at the call of the hearing OMSL informed the Commission that they issued a **rescission** because the suspending test was in error.
- 10-MSRC-114 Eric Kembel, 10-MSRC-117 Jeffery Dunning and 10-MSRC-125 Brandon H. Pendley each appeared and presented evidence that the suspending test was in error and thus moved to **sustain** their appeal and restore their certificates. A motion was made to grant the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.

**The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:**

- 10-MSRC-116 Matthew B. Kincer was called and was represented by Hon. Wes Addington. Commissioner Sander’s recused citing a conflict. Kincer by counsel demonstrated through testimony and a subsequent negative test that more likely than not the suspending test was in error. Addington moved to **reinstate**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 10-MSRC-135 Byron K. Bowles was called and did not appear or participate and no one appeared on his behalf. OMSL moved for a **revocation** to March 2011. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

**The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:**

The Commission called the procedurally similar cases of 10-MSRC-046 Jerry D. Mc Reynolds 10-MSRC-047 Jeffery Coker, who appeared and filed an Answer, and 10-MSRC-048 John C. Skroch. Neither McReynolds nor Skroch filed any responsive pleadings. After proof of the Virginia suspension for violation of its substance abuse statutes and regulations, OMSL demonstrated the necessity of a reciprocal action in Kentucky. Each Respondent was revoked for such time as the Order from the Virginia authority is in effect, and may request reinstatement if and when they present evidence that they are in good standing in Virginia. A motion was made to grant the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.

**The 11:00 a.m. Docket for Motions to Modify prior Orders:**

- 10-MSRC-110 Blake A Cabbage, was called and OMSL moved to **strike 30 day suspension** for cause, an administrative error. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 09-MSRC-234 Charlie Quinn, was called, and the Commission determined to **suspend** his certifications for a year and then recall the matter to determine what disciplinary measures were appropriate. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 08-MSRC-308 Brian C. Couch and 09-MSRC-074 Josh D. Hensley were called. Each presented evidence that the prior Order was in error and entered an **Amended** Settlement and Final Order that enhanced the testing protocol to insure compliance. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.

- 08-MSRC-162 Buford McIntosh was called and upon demonstration of proof of testing was **reinstated** contingent upon him submitting proof of the required counseling. Commissioner Donan made a motion to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-055 Jerry D. Elliot was called but did not appear. Prior to the hearing he submitted prescription records however he was not present to explain how these documents related to his suspension. Thus his motion was **denied**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

### **11:00 a.m. Appeal of Penalty Assessment**

*None submitted for this meeting.*

### **The 11:00 a.m. Docket for “traditional” type cases:**

- 06-MSRC-015 Lonnie Moore & Gary Rutherford, 09-MSRC-164 Cheyenne Mining consolidated with 09-MSRC-180 Kelvin Hopkins & Carl Howard, 10-MSRC-019 Mullins, Johnson, Slone & Shorty Enterprise, Inc., and 10-MSRC-020 Alvin Noble, Noah Vance and D & D Mining, Inc., were each called in turn and OMSL moved to continue to September 9. After discussion these were **continued** upon motion by OMSL. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-016, Fools Gold was called upon a motion for **settlement**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 09-MSRC-239 Mills, Castle & Wells, regarding Mills & Castle, 10-MSRC-008 Kermit Hall & Double “A” Mining, Inc., 10-MSRC-017 Quinton Combs and 10-MSRC-080 Ronnie D. Terry were each called upon Motion for **Default** and after good cause was shown, Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

- 10-MSRC-083 Mock, was called upon a Motion for Default & Pre-hearing. OMSL withdrew its motion for default and the parties were ordered to present **alternative dates for a multi-day hearing** in the spring. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-111 Viper Coal LLC, was called upon a Motion to hold in **Abeyance** and after hearing the arguments of counsel the Commission determined that such motion was **denied**. The motion to deny carried unanimously, and was so Ordered. Chair Childers signed the Order.

**Petitions for an Order filed by OMSL in roof control cases:**

*None submitted for this meeting.*

**The 1:00 p.m. Docket for “traditional” type cases:**

- 10-MSRC-018 ICG Knott County Coal was called. OMSL by counsel indicated that a parallel MSHA case would likely resolve the State case. OMSL moved to **continue** to March. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

**Old Business**

❑ **Ratification of Final Order:**

*None scheduled for this meeting.*

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday September 9, 2010, and the possibility of one or more traditional type hearings.

❑ **Status Report & Abeyances;**

*None submitted for this meeting.*



❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

**New Business**

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** is remains forty two (42) cents per mile.

❑ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 2011** at the KY History Center.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

❑ **Probable Cause Determinations**

- 10-MSRC-137 Tim Brock was presented for a Probable Cause Determination. Commissioner Donan made a motion to **grant** which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-123 Carlos Combs, Terry Dishner & Cumberland River Coal Co. was called. OMSL moved to withdraw the previous probable cause determination without prejudice to re-file to correct deficiencies in the pleading that became apparent after the filing. Commissioner Donan made a motion to **grant** which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

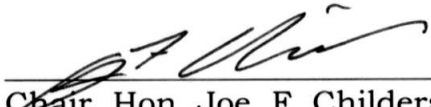
❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday September 9, 2010.**
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday September 9, 2010. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
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Chair Hon. Joe F. Childers  
Mine Safety Review Commission

9-9-10  
Date